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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/863,845	05/23/2001	Herve F. Bouix	2870/296	9937

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EXAMINER

MAI, TRI M

ART UNIT PAPER NUMBER

3727

DATE MAILED: 02/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/863,845

Applicant(s)

BOUIX ET AL.

Examiner

Tri M. Mai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11-17 is/are pending in the application.
- 4a) Of the above claim(s) 11 and 13-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

### **DETAILED ACTION**

1. Claims 11, and 13-17 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to non-elected invention as set forth in a previous Office Action.

#### ***Claim Rejections - 35 USC § 102***

2. Claims 1, 2, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by either Wallace (3007594) or MacDonald et al. (2562726), or in the alternative, over either Wallace or MacDonald in view of Nohara (4646925). Either Wallace or MacDonald teaches a container having a first thin-walled bottle with a neck extending from a storage portion, and a minimum wall thickness, and a molded over resin body having a maximum wall thickness at least three times the minimum wall thickness of the storage portion.

In the alternative, Nohara teaches that it is known in the art to provide thermoplastic outer layer by injection molding (Fig. 6, col. 2, ln. 56).

With respect to the new limitation, the patentability of a product does not depend on its method of production. If the product in the product - by - process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 227 USPQ 964, 966 (Fed. Cir. 1985). See MPEP 2113. Furthermore, it is noted that Nohara teaches the temperature for drawing the polyester to be 85 degrees to 120 degree Celsius (col. 6, ln. 3).

3. Claims 1, 2, 4, 5, and 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Barriere (3,663,259), or in the alternative, under 35 U.S.C. 103(a) as being unpatentable over Barriere in view of either Nohara (4646925) or Wallace (3007594). Barrier teaches a container having a first thin-walled bottle with a neck 2 extending from a storage portion, and a minimum

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wall thickness, a resin body 5 having a maximum wall thickness at least three times the minimum wall thickness of the storage portion. With respect to the outer over molded outer resin, the method of injection molding do not impart any structure over resin body of Barriere.

Regarding claim 2, the bottle is made from glass (col. 1, lines 51).

Regarding claim 5, the inside body is substantially round as claimed.

Regarding claim 9, note the indicia 3 being formed in the bottle. (col. 1, lines 30).

In the alternative, either Nohara or Wallace teaches that it is known in the art to provide the outer resin outer body by injection molding. It would have been obvious to one of ordinary skill in the art to provide the outer body by injection molding in Barriere as taught by anyone of Nohara or Wallace to provide an alternative method for making the outer layer.

***Claim Rejections - 35 USC § 103***

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Barriere rejection, as set forth in paragraph 3, in view of Frye et al. (4138027). Barriere meets all claimed limitations except for the inner bottle being made from aluminum. Frye teaches that it is known in the art to make the inner bottle out of aluminum (col. 2, line 64). It would have been obvious to one of ordinary skill in the art to make the inner bottle out of aluminum in Barriere as taught by Frye to provide the desired properties for the inner bottle.

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Barriere rejection, as set forth in paragraph 3, in view of Shaffer (3006780). Barriere meets all claimed limitations except for the resin body being square. Shaffer teaches that it is known in the art to provide an outer body being square. It would have been obvious to one of ordinary skill in the

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art to provide the resin body being square in Barriere as taught by Shaffer to provide added stability.

6. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Barriere rejection, in view of Frye et al., as set forth above, and further in view of Reinhard (3870186).

The modified container of Barriere meets all claimed limitations except for the inner bottle being anodized. Reinhard teaches that it is known in the art to anodize the inner surface of a body. It would have been obvious to one of ordinary skill in the art anodize the inner surface of the modified container of Barriere to provide the desired finish.

#### ***Response to Arguments***

7. Applicant's arguments with respect to claims have been considered but they are not persuasive.

As set forth previously, the patentability of a product does not depend on its method of production. If the product in the product - by - process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe , 227 USPQ 964, 966 (Fed. Cir. 1985). See MPEP 2113. The claimed is a container and the structure of the applied art above meet the structural limitations of the claimed container. No matter by what method of production, the container in the applied art, as set forth above, is the container as claimed.

Furthermore, it is noted that Nohara teaches the temperature for drawing the polyester to be 85 degrees to 120 degree Celsius (col. 6, ln. 3).

*Conclusion*

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (703)308-1038. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (703)308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tri M. Mai   
Primary Examiner  
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